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February 17, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
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Federal Communications Commission
1919 M Street, N.W.
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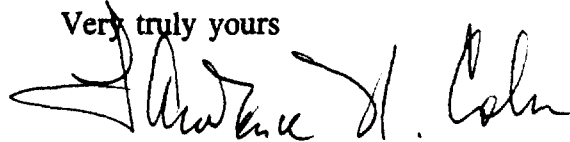
Re: Reply Comments
MM Docket No. 97-234
GC Docket No. 92-52
GEN Docket No. 90-264

Dear Ms. Salas

Transmitted herewith, on behalf of WEEU Broadcasting Company, are an original and five (5) copies of its Reply Comments in the above-captioned proceeding.

Should you have any questions with respect to this filing, please contact the undersigned.

Very truly yours



Lawrence N. Cohn

Enclosures

BEFORE THE

Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act)
-- Competitive Bidding for Commercial)
Broadcast and Instructional Television Fixed)
Service Licenses)

Reexamination of the Policy)
Statement on Comparative)
Broadcast Hearings)

Proposals to Reform the Commission's)
Comparative Hearing Process to)
Expedite the Resolution of Cases)

MM Docket No. 97-234

GC Docket No. 92-52

GEN Docket No. 90-264

Reply Comments of WEEU Broadcasting Company

WEEU Broadcasting Company ("WEEU"), licensee of AM broadcast station WEEU, Reading, Pennsylvania, by its attorneys, pursuant to Section 1.415 of the Commission's rules, hereby submits these Reply Comments in response to the Commission's *Notice of Proposed Rulemaking* in the above captioned proceeding. In response to paragraphs 47-51 of the *Notice*, WEEU submits these Reply Comments in support of the Comments of Jacor Communications, Inc. ("Jacor"), and others, which urge that an existing AM licensee requesting modification of its license should not be subject to the filing of a competing application, and therefore not subject to competitive bidding against an applicant seeking a

new AM license which is mutually exclusive with the modification.^{1/}

In paragraphs 47-48 of the *Notice*, the Commission seeks comment on whether mutually exclusive applications for major modification should be subject to auctions under section 309(j)(1) and whether the Commission should use comparative hearings to resolve mutually exclusive applications. WEEU has filed a major modification with the Commission (File No. BP-971002AA) to move its transmitter, increase power, and change frequency in order to continue and improve the service it provides to Reading, Pennsylvania, its community of license. As the Commission has previously stated, in an earlier phase of this proceeding, the legislative history of section 309(j)(1) suggests that, "competitive bidding is not permitted 'in the case of a renewal or *modification* of the license.'"^{2/} Given this legislative history, a licensee that seeks to modify its license should not be subject to competitive bidding, if the mutually exclusive application is an application for a new license.

Thus, WEEU agrees with Jacor that the Commission should only allow applications that also seek to modify an existing license to compete against an application for major modification.^{3/} WEEU believes that applications that seek to modify existing licenses should not be subject to competing initial applications. Congress stated its intention for the Commission to use alternatives to competitive bidding where appropriate:

^{1/} Jacor Comments at 2-5; National Association of Broadcasters (NAB) Comments at 2-4; *see* KM Broadcasting Comments at 4-5.

^{2/} *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2355 (1994).

^{3/} Jacor Comments at 3. NAB also argues that broadcasters that are merely seeking to continue or improve their licensed operations should not be required to bid against applicants for a new facility. NAB Comments at 2.

The conferees are particularly concerned that the Commission might interpret its expanded competitive bidding authority in a manner that minimizes its obligations under section 309(j)(6)(E), thus overlooking engineering solutions, negotiations, or other tools that avoid mutual exclusivity.^{4/}

Such "other tools that avoid mutual exclusivity" should include a finding by the Commission that modifications, like those sought by WEEU, are not subject to the filing of a competing application from those seeking an initial license.

Conclusion

For the forgoing reasons, the Commission should not subject applications for modification of an existing broadcast station to competing application or to competitive bidding from those seeking an initial license.

Respectfully submitted,

WEEU BROADCASTING COMPANY

By: 

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Dated: February 17, 1998

^{4/} 143 Cong Rec H 6131, 6173. The Commission only sought the extension of auction authority for new analog radio and TV licenses, not for modification applications. See Statement of Reed E. Hundt, Chairman of the Federal Communications Commission, Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, House of Representatives, Feb. 12, 1997 at 14-15.